

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG DIVISION**

**JULIE ANN HAMSTEAD,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.: 3-18-cv-79  
HONORABLE GINA GROH**

**WEST VIRGINIA STATE POLICE,  
TROOPER D.R. WALKER,  
CITY OF RANSON, WEST VIRGINIA,  
SARGEANT KEITH SIGULINSKY,  
CITY OF CHARLES TOWN, WEST VIRGINIA,  
OFFICER JASON NEWLIN,  
THE WEST VIRGINIA DIVISION OF HIGHWAYS,  
RODNEY D. HEDRICK, SR.,  
KYLE REED KOPPENHAVER,  
A.B., an unknown individual known as the West Virginia  
DOH "Muscle Man" on the 2016 Ranson-Charles Town  
Green Corridor Fairfax Boulevard Project,  
JEFFERSON CONTRACTING INC., a corporation,  
JEFFERSON ASPHALT PRODUCTS COMPANY, a corporation,  
DALE DEGRAVE,  
ALLEN SHUTTS,  
JOHN TIMOTHY MORRIS,  
CHARLES TOWN GENERAL HOSPITAL,  
dba Jefferson Medical Center,  
KELLY HARBERT, RN, and  
X, Y AND Z, unknown persons who conspired and/or aided and abetted  
in fabrication of false criminal charges against Julie Hamstead,**

**Defendants.**

**SECOND AMENDED COMPLAINT**

Comes Plaintiff Julie A. Hamstead, and for her Second Amended Complaint against the

Defendants says as follows:

### **COUNT I – NATURE OF THE COMPLAINT**

1. This action is brought based on common law torts and violations of civil rights, including violations in the constitution and statutes of the United States.

### **COUNT II – JURISDICTION AND VENUE**

2. Both jurisdiction and venue lie with this Court in that the events which are the subject of this claim occurred in Jefferson County, West Virginia. The causes of action asserted herein against the WVSP and political subdivisions of the State seek only recovery to the extent they are covered by liability insurance and such liability insurance exists. No recovery of State Funds is sought. In addition to claims under State Law, Plaintiff seeks remedies against Defendants under Title 42 U.S.C. §1983. This case has been removed this court by the defendants based on said federal question. Removal by defendants from the Circuit Court of Jefferson County, West Virginia was also based on this controversy between citizens of different states pursuant to 42 U.S.C. §1332 where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

3. Preliminary written notice of this proceeding has been served more than 30 days next preceding the filing of this suit upon the chief officer of the WVSP, Colonel J.L. Cahill, Superintendent of the WVSP, the chief officer of the DOH, Thomas J. Smith, P.E. Commissioner, and the Attorney General of the State of West Virginia, by certified mail, return receipt requested, in accord with West Virginia Code §55-17-3.

### **COUNT III - PARTIES**

4. Plaintiff is a fifty-one year old mother of four children, 5'7" weighing approximately 155 pounds, with no prior criminal record of any kind prior to the events described in this complaint.

She left the State of West Virginia because of the events herein described, in fear of further assault and abuse by Defendant Trooper Walker and the State Police of West Virginia.

5. The Defendant West Virginia State Police (WVSP) is an agency of the State of West Virginia charged with statewide enforcement of criminal and traffic laws, which, at all times relevant hereto, employed Trooper D. R. Walker.

6. Defendant D.R. Walker ("Trooper Walker") was, at all times relevant hereto, employed as a West Virginia State Police Trooper stationed in Jefferson County, West Virginia. At all times herein alleged, Trooper Walker was acting under color of authority and with the cloak of authority conferred upon him by such position.

7. The City of Ranson is a political subdivision of the State of West Virginia and, as such, is liable for the negligent conduct of its employees and agents, including that of its police Sergeant Keith Sigulinsky, to the extent that he acted within the scope of his employment as defined by West Virginia Code §29-12A-1 et seq.

8. Sergeant Keith Sigulinsky, was, at all times relevant hereto, employed as a police officer by the City of Ranson and was at all times herein alleged, acting under color of authority and with the cloak of authority conferred upon him by such position.

9. The City of Charles Town is a political subdivision of the State of West Virginia and, as such, is liable for the negligent conduct of its employees and agents, including that of its police Officer Jason Newlin, to the extent that he acted within the scope of his employment as defined by West Virginia Code §29-12A-1 et seq.

10. Trooper Walker, Sergeant Keith Sigulinsky, Officer Jason Newlin, Rodney Hedrick, John Timothy Morris, Dale DeGrave, and Allen Shutts are believed to be residents of the State of West Virginia.

11. The Defendant Kyle Reed Koppenhaver is believed to have moved from West Virginia promptly following the events which are the subject of this suit and he is believed to be the party identified as “A” on this First Amended Complaint.

12. Jefferson Contracting, Inc., (“Jefferson Contracting”) and Jefferson Asphalt Products Company (“Jefferson Asphalt”) are corporations domiciled in the State of West Virginia.

13. At times alleged herein, the Defendants Rodney Hedrick and Kyle Koppenhaver (hereafter sometimes referred to as the “WVDOH Employees”) were acting within the scope of their employment for the Defendant West Virginia Division of Highways (the “DOH”), which is a Division of the West Virginia Department of Transportation and an agency of the State of West Virginia pertaining to the construction of a sidewalk and highway project sometimes known as the FAIRFAX BOULEVARD GREEN CORRIDOR PROJECT or Fairfax Boulevard Project. Some of the acts committed by them as herein alleged may have been committed outside the scope of their employment.

14. The said FAIRFAX BOULEVARD GREEN CORRIDOR PROJECT or Fairfax Boulevard Project was undertaken by the Defendant DOH, the Defendant City of Ranson and the Defendant City of Charles Town, which Project was to commence between the defendants on or about 2013 as provided in DOH contract.

15. Regarding some of the acts hereinafter alleged, Dale DeGrave, Allen Shutts, and John Timothy Morris (sometimes herein jointly referred to as the “Jefferson Contracting Employees”) were acting within the scope of their employment for the Defendant Jefferson Contracting and/or Jefferson Asphalt, or both, in the construction of the said project. Regarding other acts hereinafter alleged, Dale DeGrave, Allen Shutts, and John Timothy Morris (sometimes herein

jointly referred to as the “Jefferson Contracting Employees”) may have acted outside the scope of their employment.

16. Upon information and belief, the Defendant Allen Shutts also acted in a dual capacity and was designated as “Project Superintendent” by the WVDOH. He acted as a dual agent for both the WVDOH and Jefferson Contracting and/or Jefferson Asphalt.

17. Jefferson Asphalt was the contractor on said Project and thereby responsible for the conduct of the private workers on the project.

18. Kelly Halbert, at all times herein relevant, was an employee of Defendant Jefferson Medical Center and is believed to have been working from Charles Town General Hospital located in Ranson, West Virginia. At all times hereinafter alleged, Nurse Kelly Halbert was acting within the scope of her employment under Jefferson Medical Center.

#### **COUNT IV – STATEMENT OF FACTS**

19. On Monday, April 18, 2016, workmen were observed tearing up the side walk in front of 113 and 105 Fairfax Boulevard (currently 507 and 509 S. Fairfax), commercial/residential properties owned, in part, by Plaintiff. Plaintiff soon learned that the historic vehicle access to the alley between the two houses, which provided both properties parking and sidewalk wheel chair access, would be blocked with a new raised sidewalk, and she also learned that street parking would be entirely eliminated for the 105 Fairfax Blvd. (currently 509 S. Fairfax Blvd.) property.

20. Pursuing a protest of the planned government action adversely affecting said property, after conversing with the Ranson Assistant City Planner, Plaintiff was referred (on April 21, 2016) to the Ranson field office of WVDOH to meet with its engineer and determine whether changes could be made to the project plans.

21. Upon information and belief, Plaintiff believes and alleges that the field office was informed of her intended protest and anticipated arrival.

22. Upon arrival at the Ranson DOH temporary field office, Plaintiff initially encountered three males, two workers in the front office (believed to be Defendant Hedrick and Defendant Shutts) and one engineer (Ryan Arnold).

23. While at the office of WVDOH on April 21, 2016, Plaintiff informed DOH employees present on that date that she had not been given any prior notice for this Project and that this Project would adversely affect her property by blocking parking lot access and taking away all street parking in front of 105 Fairfax Boulevard (now 509 S. Fairfax Boulevard), which Plaintiff was trying to market commercially and was therefore concerned about providing adequate parking to future potential buyer(s).

24. That while at the office of WVDOH on April 21, 2016, Plaintiff informed the two DOH employees sitting in front office with her that she intended to pursue action to stop the Project from continuing until the parking issues could be resolved. At that time, one DOH employee, believed to be Hedrick, told her that nothing would stop the Project and that they just wanted to complete it and get out of "[that] hell hole."

25. That while at the office of WVDOH on April 21, 2016, a large male entered the front office, believed to be Defendant Kyle Koppenhaver, who upon information and belief had also been contacted and called in prior to Plaintiff's anticipated arrival at said office.

26. That this large male was also an employee and agent of WVDOH and was introduced to Plaintiff as the State's "Muscle Man." She was told by Defendant Hedrick that Muscle Man was the man the State had sent there to ensure that the project was carried out without a hitch.

Upon information and belief, "Muscle Man" was Defendant Kyle Koppenhaver. Muscle Man spoke not a word to Plaintiff but stared coldly at her.

27. Plaintiff's expressed intent at this WVDOH office on April 21, 2016, was to use legal means to modify project plans, but the DOH agents' expressed intent was to threaten Plaintiff with retaliation should she pursue her protest.

28. On April 25, 2016, Plaintiff observed concrete forms being set on the sidewalk in front of her properties, so it became obvious to Plaintiff that the sidewalk pour was imminent, and that this pour would permanently block street access to her properties' shared parking area/lot.

29. On April 25, 2016, at approximately 4:05 P.M., Plaintiff noticed a "Jefferson Asphalt" work truck pulling into the American Public University parking lot off 1<sup>st</sup> Avenue in Charles Town, WV, and decided to slowly pull in and park beside the truck, to ask a question about the sidewalk concrete pour date/time.

30. Observing workers gathered near the front of the parking lot, Plaintiff pulled into the parking at the back of the parking lot, the same way the Jefferson Asphalt truck had entered into the parking lot, driving slowly over a small patch of grass and coming to a stop beside the truck.

31. Plaintiff pulled her Honda Pilot vehicle into the private parking lot of American Public University in Charles Town, WV, and parked beside a work truck owned by Jefferson Contracting and/or Jefferson Asphalt which was driven by Defendant Dale DeGrave. The exiting passenger of the truck, John Timothy Morris, walked in front of her parked car.

32. Plaintiff rolled down her window and asked John Timothy Morris, "can I ask you a question," at which time he rolled his eyes, said "sure" and began walking back toward her driver's side window.



33. John Timothy Morris took a couple of steps in the direction of Plaintiff's driver's side door, then jumped back quickly as the truck driver drove into the left front driver's door of Plaintiff's Honda Pilot with his right front tire.

34. Dale DeGrave then immediately backed his work truck away from Plaintiff's vehicle, jumped out and apologized to Plaintiff, telling her that he had not seen her parked there. John T. Morris, the passenger, then screamed at Mr. DeGrave, "great, now you owe the woman a new car!"

35. Plaintiff advised Dale DeGrave that she would move her car to an upfront parking space, so as to clear the path for other construction vehicles. She did so, parking her Honda Pilot at the front south side of the lot where concrete parking barriers had been placed for that purpose.

36. Plaintiff then walked back to the truck, intending to exchange insurance information with Dale DeGrave whereupon three police officers suddenly came walking up to them. Incredulously, as the three officers approached, John Timothy Morris (passenger) then falsely screamed out to these officers, "she came in here like a bat outa hell and didn't stop."

37. Prior to Morris screaming, there existed no disturbance of any kind whatsoever, merely a simple accident in a private parking lot that neither warranted action by any police officer nor conferred upon any police officer jurisdiction over the events. The following individuals were present in the parking lot and heard Morris' false scream to police: Allen Shutts, Rodney Hedrick, Kyle Koppenhaver, Dale DeGrave and numerous other male employees of WVDOH and Jefferson Contracting defendants.

38. Plaintiff immediately protested the false statement saying, "that's not true, he is lying," and further told Trooper Walker that her "car was in park" and that the truck had hit her.

39. Trooper Walker barked "I don't care" and screamed at Plaintiff "Shut Up."



40. Plaintiff noticed a familiar WVDOH employee standing behind Trooper Walker, who she recognized as the same individual she had met the week before, Kyle Koppenhaver, whom they called "Muscle Man," and she begged this man, who, upon information and belief, witnessed everything, to tell the police the truth.

41. Although Muscle Man (Kyle Koppenhaver) knew that Plaintiff was telling the truth, he refused to speak up and tell the officer the truth and he just stared coldly back at Plaintiff while Trooper Walker again screamed at Plaintiff: "Shut Up." Kyle Koppenhaver's manifest intent and gesture was to support Morris's false statement and further escalate the interaction which he knew Trooper Walker had already escalated by rudely and belligerently screaming at a female citizen who was already stressed over the accident to "shut up" and by telling her that he did not care what she had to say about the cause of the accident.

42. Trooper Walker knew that Plaintiff was desperately trying to provide him with her information but he refused to hear the truth, responding forcefully "I don't care."

43. Trooper Walker violated police policy and protocol, deliberately escalating the situation, greatly elevating Plaintiff's anxiety by not listening to her side of the story and intentionally avoiding any meaningful or productive dialog with Plaintiff. He did so with the intention of falsely charging Plaintiff with destruction of property and to create circumstances by which he could carry out his bully pattern behavior of abusing citizens, particularly women, and so that he could arrest Plaintiff and jail her without affording her an arraignment.

44. Meanwhile, the group of WVDOH and Jefferson Contracting employees, including Dale DeGrave, Rodney Hedrick, Allen Shutts, John Timothy Morris, and Kyle Koppenhaver, huddled with other police officers, including officers Sigulinsky and Newlin, in the center of the parking

lot, conspiring to have Plaintiff falsely charged with destruction of property even though they knew that Dale DeGrave had caused the accident and that his vehicle had suffered no damage.

45. In order to better hear what was being said and exercise her right to defend herself against false charges by the conspiring defendants, Plaintiff turned toward the group of WVDOH and Jefferson Contracting employees who had moved to the center of the parking lot, whereupon Trooper Walker grabbed Plaintiff's right arm, dragged her backward several feet, then spun her around and violently pulled her left arm up over her head and twisted it back and forth. Walker then forced Plaintiff's left arm behind her body, lifted her by her left bent arm, pushed her forward across the parking lot and then smashed the right side of her face into DeGrave's work truck breaking her eyeglasses. Walker then slammed Plaintiff face down onto the ground, bloodying her knees, tearing open her leggings on the gravel. Walker then placed her in handcuffs behind her back as she lay helpless on the ground, face down.

46. At all times relevant Trooper Walker knew that Plaintiff was unarmed, and he was at no time in fear of his safety or the safety of others, yet he used unnecessary and excessive force to arrest Plaintiff on false charges.

47. Trooper Walker then placed Plaintiff into the back seat of his police cruiser and turned up the already blaring hard rock music that was playing with the windows closed in the vehicle in order to place Plaintiff in further distress and anxiety and in order to distract her from the unlawful and fraudulent events that he conspired to conduct in the parking lot.

48. One of the co-conspirator defendants moved a red dump truck up from the very back of the parking lot and parked it directly beside Trooper Walker's cruiser to block Plaintiff's view of the parking lot. This red dump truck was moved to enable false evidence to be produced in the parking lot to support the false charge of Destruction of Property, to cover up Walker's excessive

use of force, and to justify the other appendant charges of obstruction and disorderly conduct. It was done in the presence of, and at the instance of Trooper Walker and the other two defendant officers, and as part of a concerted action by the Jefferson Contracting and WVDOH defendants to charge Plaintiff with the crimes of destruction of property, disorderly conduct and obstructing an officer.

49. In furtherance of their scheme and plan, thereafter Trooper Walker, Sergeant Sigulinsky and Officer Newlin conspired with the remaining defendants to induce one of the defendants, whose identity is unknown, to drive Plaintiff's Honda Pilot in order to create skid marks in the gravel. However, the skid marks thus produced for photographing purposes were located 30-40 feet from the point of impact. This was done to support Defendant Morris's false statement to police that Plaintiff drove into the parking lot "like a bat out of hell," striking the truck and "not stopping." This act was fraudulently and unlawfully carried out with the intent to support the false charge that Plaintiff intentionally caused "destruction of property," to DeGrave's work truck under West Virginia Code §61-3-30, and in an attempt to justify Walker's violent use of excessive force in Plaintiff's arrest and to deny Plaintiff her liberty in violation of her 4<sup>th</sup> and 14<sup>th</sup> Amendment rights. Said conspiracy was actively and/or passively participated in by officers Sigulinsky and Newlin, all WVDOH employees present and all Jefferson Contracting employees present in the American Public University on April 25, 2016.

50. At the time of the moving of Plaintiff's vehicle to create the skid marks, Trooper Walker, Dale DeGrave, Timothy Morris, and the other Defendants who had witnessed the accident knew that Plaintiff's car had stopped prior to the impact when it was struck by Dale DeGrave's truck.

51. Trooper Walker observed that there appeared to be no skid marks at the point of impact.

52. Morris and the other defendants knew that after Morris exited DeGrave's truck, he had walked back toward the front of Plaintiff's stopped vehicle in response to her request.

53. Upon information and belief, all three police officers, Trooper Walker, Officer Newlin, Sergeant Sigulinsky and some or all of the Jefferson Contracting Employees, including Dale DeGrave, Allen Shutts and John Timothy Morris, and all or some of the WVDOH Employees, including Rodney Hedrick and Kyle Koppenhaver, were present when Plaintiff's vehicle was moved as aforesaid and these parties participated in said unlawful plan and scheme to fraudulently manufacture evidence to support said charges against Plaintiff.

54. Upon information and belief, all of the Jefferson Contracting Employees, including Dale DeGrave, Allen Shutts and John Timothy Morris, and all of the WVDOH Employees, including Kyle Koppenhaver and Rodney Hedrick, knew that Plaintiff had not caused destruction of property to the vehicle driven by Dale DeGrave.

55. Dale DeGrave informed the police that his vehicle suffered no damage in the accident but yet all of the Defendants, including Dale DeGrave, pursued the criminal charge of destruction of property, along with the appendant charges of disorderly conduct and obstruction against Plaintiff notwithstanding said information.

56. The defendants Dale DeGrave, Timothy Morris, Rodney Hedrick, Allen Shutts, Sergeant Sigulinsky, and Officer Newlin all provided the police with false written statements so as to procure false charges against her of destruction of property, disorderly conduct and obstructing an officer.

57. Subsequent to her arrest, Trooper Walker falsely charged Plaintiff with said criminal charges.

58. The defendant officers Walker, Sigulinsky and Newlin knew that Plaintiff had not caused Destruction of Property simply by looking at the respective physical conditions of the vehicles.

59. That Defendant police officers participated in fabricating evidence against Plaintiff by moving or allowing Plaintiff's vehicle to be moved after her arrest so as to justify the pursuit of the said false criminal charges against Plaintiff which constitutes the serious crime of obstruction of justice among other offenses and violations of Plaintiff's 4<sup>th</sup> Amendment and 14<sup>th</sup> Amendment rights.

60. A video which depicts the fabrication of evidence was subsequently produced by American Public University (APU) at Plaintiff's request and was provided to the police by Plaintiff.

61. Said video, selectively chosen by APU for a time subsequent to Plaintiff's arrest, reveals Plaintiff's vehicle entering the APU lot over one minute *after* Defendant Shutts had prematurely and fraudulently placed a call to 911 reporting that her vehicle "done run into one of the trucks" or words to that effect.

62. Said video also reveals a tall male individual with yellow reflective clothing with long black sleeves exiting Plaintiff's vehicle after her vehicle comes to a stop at the back of the parking lot.

63. The said video reveals that Plaintiff's vehicle as driven by the unknown individual did not come to a stop at the back of the parking lot until approximately two minutes after it is shown entering the front of the parking lot.

64. In regard to said video, Trooper Walker

- a. Admits that Plaintiff's Honda Pilot vehicle is shown on the video where it came to a stop at the back of the APU parking lot,

- b. Admits that said location where Plaintiff's vehicle came to a stop at the back of the parking lot is the spot where Trooper Walker photographed it from the rear for the purpose of depicting the tires tracks which Trooper Walker claims were made by Plaintiff while driving the vehicle,
- c. Claims that the tall individual whose head tops the vehicle roof located six feet off the ground is the 5'7" Plaintiff,
- d. Initially claimed, along with Officer Newlin, that he did not know if anyone had entered Plaintiff's vehicle on the video after Plaintiff's arrest,
- e. Now denies that he knows who any of the individuals are who are plainly shown on the video entering and exiting Plaintiff's vehicle, two of which entries, were unlawfully made at the front passenger door of her vehicle without probable cause for a search and without Plaintiff's consent,
- f. Claims he does not know how he obtained Plaintiff's driver's license (which license was located in Plaintiff's purse inside her vehicle and which Walker admittedly seized and has not returned),
- g. Claims he had not fully reviewed the video prior to Plaintiff's trial in magistrate court which had been made available to him one year prior thereto, and
- h. Claims he does not know how Plaintiff's eye glasses, which were broken when Trooper Walker slammed Plaintiff's face into the work truck, were thereafter put into her vehicle.

65. Following her arrest, Trooper Walker then transmitted Plaintiff in the back seat of his cruiser, unlawfully unbuckled, to the Jefferson Medical Center and chided Plaintiff with words to the effect of "don't show your ass" at the hospital.

66. Prior to Plaintiff's arrival at the Hospital, Trooper Walker, in concert with Officer Jason Newlin, contacted Kelly (Newlin) Halbert who was waiting at the hospital emergency room receptionist desk area when Trooper Walker arrived there with Plaintiff.

67. Upon arriving at the emergency entrance, Trooper Walker pushed Plaintiff into the emergency room by her injured left arm, causing her to cry out in pain in front of hospital staff who were present, including Defendant Kelly (Newlin) Halbert.

68. The Hospital staff subsequently advised Plaintiff's counsel that the video camera located at the hospital emergency entrance was non-operable at the time hereinabove alleged. Upon a subsequent inquiry, the Hospital's attorney stated that the video recording had been destroyed because of the passage of time.

69. The Hospital staff advised Trooper Walker that Plaintiff had suffered a possible muscle tear to her left arm. However, in an effort to cover up his excessive use of force in Plaintiff's arrest, and to conceal his battery and the resulting injuries to Plaintiff, Trooper Walker conspired with Defendant Kelly Halbert, RN, to violate Plaintiff's rights under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and obtained from Kelly (Newlin) Halbert a false statement to the effect that Plaintiff had suffered no injuries and that she was abusive to Trooper Walker and created a disturbance, falsely crying out in pain when entering the Hospital.

70. Nurse Halbert's written statement was not provided to Trooper Walker as a result of a Court Order, Subpoena or Warrant.

71. Nurse Halbert's written statement given to Walker was not exempt from nondisclosure under 45 C.F.R. § 164.512(f) or otherwise.



72. Plaintiff was further abused and mistreated by hospital staff who negligently forced Plaintiff's injured left arm above her head to take x-rays, laughing at her when she cried out in pain as her arm was yanked above her head. They further would not assist her in getting down from the steel imaging table and made her roll off, and again they laughed as she slipped.

73. Imaging staff treated Plaintiff as a criminal, and other staff failed to document numerous bruises and contusions all over her body, totaling ignoring and failing to treat her bloodied knees. Although undocumented, one sympathetic nurse showed Plaintiff finger marks (bruise imprints from Walker's hand) on her right upper arm, where he had dragged her across the parking lot.

74. Nurse Halbert and other Hospital staff conspired with and aided and abetted Trooper Walker to provide support for his false charges against Plaintiff by acting in a concerted effort with Trooper Walker to provide an alternative, post arrest, false and specious claim of disorderly conduct allegedly occurring in the Defendant Hospital.

75. Trooper Walker, subsequently used, and continues to use, the Office of the Prosecuting Attorney of Jefferson County as his "stalking horse" in an attempt to pursue multiple and alternative counts for his false charge of disorderly conduct, alternatively asserting that the offense occurred in the Hospital because Trooper Walker knew and knows that the private parking lot of APU where he arrested Plaintiff for disorderly conduct is not open for use by the public for parking and therefore the offense could not have occurred there under West Virginia Code §61-6-1b.

76. Knowing that she was in great pain, and that she would be released on personal recognizance if arraigned, Trooper Walker unlawfully advised Plaintiff that she would be transported to jail in violation of his obligation under Rule 5 of the Rules of Criminal Procedure for Magistrate Court to contact a magistrate forthwith for arraignment.

77. Even after arrangements were made to have a magistrate appear for arraignment, Trooper Walker spitefully and meanly and maliciously insisted that an arraignment “was not an option” and that Plaintiff was going to jail.

78. Said efforts of Trooper Walker to unlawfully incarcerate Plaintiff incident to an unlawful arrest for which there was no probable cause without an arraignment in violation of her 4<sup>th</sup> and 14<sup>th</sup> Amendment rights was a part of his pattern behavior and practice of which the Defendant WVSP and Walker’s supervisors were aware.

79. Thereafter, an “internal investigation team” consisting of two officers from the WVSP in Martinsburg arrived and persuaded Trooper Walker that he should take Plaintiff for arraignment that had been coordinated.

80. However, prior to arraignment, with malevolent intent to sexually harass and further physically and emotionally injure plaintiff, Trooper Walker committed the following acts:

- a. Subjected Plaintiff to seriously unlawful rough car rides running stop signs and driving recklessly at speeds nearly twice the posted speed on back roads to and from the police barracks, tossing Plaintiff around in the back seat of his cruiser while unbuckled in a neck brace and arm sling,
- b. During said car rides he played loud sexually oriented music from a device in his cruiser, and, at one point touched her knee while she struggled to move away from his hand, keeping his hand fixed behind the passenger’s seat by Plaintiff’s knee for the duration of the ride, and
- c. Forced Plaintiff to sit for an extended period of time, while in pain, shaking violently on a cold metal chair in the hallway just in front of his cubicle wall at

the police barracks while he sang sex songs, ate food and made strange noises behind his desk, until he decided it was time to “call the Magistrate.”

81. After inordinate delays in transporting Plaintiff from the hospital to the Barracks and then back to the Magistrate Court in town, where he remained in his car with Plaintiff in front of the said Courthouse until the town clock struck midnight. Plaintiff was arraigned just after midnight on April 26, 2016, and released by the Magistrate on personal recognizance.

82. Trooper Walker claims that he did not preserve any in car audio or video or body audio recording of any of the incidents described herein despite having citizen contact and despite his violation of governing WVSP policy in this regard.

83. Said failure to preserve the recordings which were made during contact with Plaintiff constitutes the intentional spoliation of evidence for the purpose of violating Plaintiff's constitutional right to be free from sexual harassment, excessive use of force, a denial of Plaintiff's due process rights and the unlawful deprivation of her liberty interests.

84. That none of the defendant police officers preserved audio and/or video footage of the events described herein, all in violation of their respective police department policies.

85. Sergeant Keith Sigulinsky was present, witnessed, and participated in the events in the above mentioned private parking lot.

86. Sergeant Sigulinsky arrived at the scene at approximately 4:00 p.m.

87. Sergeant Sigulinsky's vehicle was positioned at the scene such that its camera captured Plaintiff's arrest.

88. However, Sergeant Sigulinsky failed to preserve any of the audio video from the incident despite his admitted ability to have done so.

89. To the extent that Sergeant Sigulinsky intentionally destroyed said video of Plaintiff's arrest, his actions constitute spoliation of evidence the destruction of which violated Plaintiff's rights to due process and to be free from unlawful arrest due process and the deprivation of her liberty.

90. Sergeant Sigulinsky provided Trooper Walker with a fabricated and false statement that he engaged in a long and detailed conversation with Plaintiff and further embellished his story stating that she physically ran into him prior to her arrest.

91. Sergeant Sigulinsky's said false statement was provided to Trooper Walker for the purpose of procuring, aiding and abetting said false charges against Plaintiff and were knowingly and maliciously used by Trooper Walker in an attempt to justify the excessive use of force, Plaintiff's arrest, and ultimately the charges against Plaintiff.

92. Officer Newlin arrived at the scene and participated in the events in said parking lot, and unnecessarily used force to assist Walker in arresting Plaintiff, and then provided a false statement stating that it was necessary for him to assist.

93. Officer Newlin provided Trooper Walker with a false statement and procured additional false hearsay statements from third parties without identifying many of them so as to deprive Plaintiff of her right to due process and did so for the purpose of procuring the false charges against Plaintiff.

94. The charge of Destruction of Property was made without probable cause and was dismissed by the Magistrate Court of Jefferson County on November 11, 2017.

95. Trooper Walker refused to request dismissal of the destruction of property charge and forced Plaintiff to defend the charge at trial even though there was no damage to DeGrave's vehicle and the only damage incurred in the accident was to Plaintiff's Honda Pilot driver's door.

The damage done to Mrs. Hamstead's door was caused by an impact from the right tire of DeGrave's truck which hit her parked vehicle.

96. Arising out of the destruction of property charge, Trooper Walker also charged Plaintiff with disorderly conduct under West Virginia Code §61-6-1b and obstructing an officer under West Virginia Code §61-3-30 even though he had reason to know and did know that Plaintiff was attempting to protest the false allegations against her leading to his charge of destruction of property and even though said Code Section §61-6-1b applies only to a "public parking area" and not a private parking area which is not open to use by the public for parking as is the case here.

97. Trooper Walker falsely and maliciously brought the disorderly conduct charge and the obstruction charge against Plaintiff in an attempt to shield himself from responsibility for his excessive use of force and to justify Plaintiff's arrest.

98. The Defendants Trooper Walker, Sergeant Sigulinsky and Patrolman Jason Newlin all possessed actual knowledge of the fact that the parking lot where Plaintiff was arrested was a private parking lot not open for use by the public for parking and therefore not within the reach of West Virginia Code §61-1-1b but acted in concert with each other and aided and abetted Trooper Walker and the other defendants in their joint scheme to maliciously procure and use false charges to justify Walker's excessive use of force and to falsely charge Plaintiff with destruction of property, obstruction and disorderly conduct.

99. Defendants Nurse Halbert, State Trooper Walker, Officer Newlin, Officer Sigulinsky, Allen Shutts, Dale DeGrave, John Timothy Morris and Rodney Hedrick, maliciously pursued said false charges appearing before the Office of the Prosecuting Attorney for said purpose and appearing at Magistrate Court Trial on November 11, 2017, for said purpose.

100. Trooper Walker and the Defendants continue to conduct and conspire in Plaintiff's prosecution on the false charges of disorderly conduct and obstruction up to and through the date of the filing of this Second Amended Complaint, using the Office of the Prosecuting Attorney of Jefferson County as a "stalking horse" for said purpose.

Examples of said conspiratorial misconduct are:

- a. failing to disclose that Dale DeGrave informed the police that there existed no damage to Mr. DeGrave's vehicle,
- b. knowingly participating in, encouraging, aiding and abetting and conspiring in an attempt to alter the statement of Dale DeGrave from his written statement given to Trooper Walker (that he hit Plaintiff's vehicle) to his false statement made at trial (suggesting that Plaintiff's vehicle may have struck his vehicle),
- c. falsely informing the Prosecutor and the Magistrate Court that no use of force report existed, when, in fact, he had prepared a use of force report,
- d. falsely informing the Prosecutor and the Magistrate Court that no internal investigation of his use of force had taken place, when, in fact, Trooper Walker met with an internal investigative team of two State Troopers from the West Virginia State Police detachment in Martinsburg, West Virginia, at the hospital on April 25, 2016,
- e. singling out Plaintiff for disparate treatment and prosecution in retaliation for Plaintiff exercising her right to free speech and freedom from abuse of process and her right to an arraignment and bail prior to incarceration;
- f. conspiring with, and aiding and abetting the Prosecutor to subpoena Plaintiff's counsel as a witness for the State approximately one week before Plaintiff's

Magistrate Court trial, falsely asserting that Plaintiff's counsel held material evidence against his client and wife that could not be provided by any other witness;

g. colluding and conspiring with Nurse Halbert to use her false statement to the effect that Plaintiff committed disorderly conduct at the Defendant Hospital so that the Office of Prosecuting Attorney could allege the Hospital as an alternative location for said charge although Trooper Walker knew and knows that no officer requested Plaintiff cease any such conduct and that said element of the offense is wholly absent; and

h. to otherwise deny Plaintiff her right to due process as set forth in this Second Amended Complaint.

101. That Trooper Walker and all defendants jointly conspired to carry out and did carry out the above-mentioned actions in retaliation for Plaintiff's protest over the unvetted and unlawful State Project and for the purpose of intimidating and coercing Plaintiff into a guilty plea on false charges made against her and to aid and abet Walker in carrying out his malicious plan to ensure that Plaintiff would spend one night in jail, which is the condition Trooper Walker is accustomed to carrying out.

102. That Defendant police officers and all other defendants aided, abetted and conspired with Trooper Walker to carry out Walker's malicious scheme to overcharge Plaintiff so that she would be coerced and leveraged to plead to obstruction, thereby justifying his excessive use of force.

#### **COUNT V – CLAIMS FOR MALICIOUS PROSECUTION**

103. Plaintiff incorporates the foregoing paragraphs in this Second Amended Complaint the same as if fully set forth herein.



104. The defendants John Timothy Morris, Allen Shutts, Dale DeGrave, Kyle Koppenhaver, Rodney Hedrick, Trooper Walker, Officer Newlin, and Sergeant Sigulinsky consulted and advised together, participated and conspired with each other as aforesaid in furtherance of the prosecution of Plaintiff for destruction of property which was carried on under their countenance and approval as set forth in the foregoing paragraphs.

105. John Timothy Morris, Allen Shutts, Dale DeGrave, Kyle Koppenhaver, and Rodney Hedrick did so in retaliation for Plaintiff's expressed opposition to the Green Corridor Project and to intimidate and shut her down so that she would not further protest said project or take legal action to prevent the closure of the alley accessing her two real estate properties.

106. Trooper Walker conspired with Sergeant Sigulinsky and Officer Newlin and the other defendants in an attempt to coordinate statements and testimony to secure a conviction against Plaintiff.

107. Trooper Walker's primary motive in conspiring to fabricate physical evidence and testimony was to improperly charge Plaintiff to justify Trooper Walker's excessive use of force in the arrest of Plaintiff where no force was necessary and prevent Plaintiff from a successful suit against him for excessive use of force arising out of his illegal arrest.

108. Defendant John Timothy Morris maliciously instigated the charge of destruction of property and Plaintiff's arrest upon said charge by falsely screaming out to Trooper Walker that she came in "she came in here like a bat outa hell and didn't stop" as set forth above including ¶¶ 30-35, *supra*.

109. Thereafter Defendant Morris consulted with the other defendants and advised together with them in the APU parking lot to have her prosecuted for said false charge maliciously and with malice aforethought knowing that she had not committed destruction of property nor had

she even caused the accident that occurred when Dale DeGrave negligently drove the right tire of his pick up truck into the passenger door of her Honda Pilot which was stopped and in park as set forth above including ¶¶ 44, 47-56 *supra*.

110. Plaintiff's prosecution on the false charge of destruction of property was carried out under the countenance and approval of John Timothy Morris who provided Trooper Walker with a false statement, provided information to the Office of Prosecuting Attorney of Jefferson County and appeared at Plaintiff's trial to testify against her whereupon the false charge was dismissed for lack of probable cause.

111. John Timothy Morris fraudulently concealed from Plaintiff the activities in the parking lot subsequent to her arrest that produced the fabricated tire marks which were used to charge, prosecute and try her on said false charge of destruction of property.

112. Defendant Dale DeGrave maliciously participated with Defendant Morris and with the other defendants in the instigation of the charge of destruction of property and Plaintiff's arrest upon said charge by ratifying and supporting Morris's aforesaid false statement to the police that Plaintiff had caused the accident.

113. Defendant DeGrave thereafter consulted with the other defendants and advised together with them in the APU parking lot and thereafter to have Plaintiff prosecuted for said false charge maliciously and with malice aforethought knowing that she had not committed destruction of property nor had she even caused the accident that occurred when Dale DeGrave negligently drove the right tire of his pick-up truck into the passenger door of her Honda Pilot as set forth above including ¶¶ 44, 50-56, *supra*.

114. Plaintiff's prosecution on the false charge of destruction of property was carried out under the countenance and approval of Dale DeGrave who altered his story from the written

statement provided to the police to the oral statement subsequently made by him that “she hit me” which false statement was provided to assist in Plaintiff’s prosecution by the Office of Prosecuting Attorney of Jefferson County.

115. Defendant DeGrave appeared at Plaintiff’s trial to testify against Plaintiff whereupon the false charge was dismissed for lack of probable cause.

116. Dale DeGrave fraudulently concealed from Plaintiff the activities in the parking lot subsequent to her arrest that produced the fabricated tire marks which were used by him and the other defendants to charge, prosecute and try her on said false charge of destruction of property.

117. Defendant Allen Shutts maliciously participated with Defendant Morris and with the other defendants in the instigation of the charge of destruction of property and Plaintiff’s arrest upon said charge by providing a statement to the police ratifying and supporting Morris’s aforesaid false statement to the police that Plaintiff had caused the accident.

118. Defendant Shutts further consulted with the other defendants and advised together with them in the APU parking lot and thereafter to have Plaintiff prosecuted for said false charge maliciously and with malice aforethought knowing that she had not committed destruction of property nor had she even caused the accident that occurred when Dale DeGrave negligently drove the right tire of his pick-up truck into the passenger door of her Honda Pilot as set forth in ¶¶ 44, 50-56, *supra*.

119. Defendant Shutts fraudulently called 911 subsequent to the accident and arrest of Plaintiff for the purpose of enabling and conducting a mock accident in order to have Plaintiff charged and prosecuted for destruction of property as set forth above.

120. Plaintiff’s prosecution on the false charge of destruction of property was carried out under the countenance and approval of Allen Shutts who assisted the Office of Prosecuting

Attorney of Jefferson County in prosecuting said charge and who appeared at Plaintiff's trial to testify against Plaintiff whereupon the false charge was dismissed for lack of probable cause.

121. Defendant Shutts fraudulently concealed from Plaintiff the activities in the parking lot subsequent to her arrest that produced the fabricated tire marks which were used to charge, prosecute and try her on said false charge of destruction of property.

122. Defendant Rodney Hedrick Defendant maliciously participated with Defendant Morris and with the other defendants in the instigation of the charge of destruction of property and Plaintiff's arrest upon said charge by ratifying and supporting Morris's aforesaid false statement to the police that Plaintiff had caused the accident.

123. Defendant Hedrick thereafter consulted with the other defendants and advised together with them in the APU parking lot and thereafter to have Plaintiff prosecuted for said false charge maliciously and with malice aforethought knowing that she had not committed destruction of property nor had she even caused the accident that occurred when Dale DeGraves negligently drove the right tire of his pick-up truck into the passenger door of her Honda Pilot as set forth above including in ¶¶ 44, 50-56 *supra*.

124. Defendant Hedrick fraudulently participated in the mock accident subsequent to the arrest of Plaintiff for the purpose of enabling and conducting the false charge of destruction of property against Plaintiff.

125. Plaintiff's prosecution on the false charge of destruction of property was carried out under the countenance and approval of Defendant Hedrick who assisted the Office of Prosecuting Attorney of Jefferson County in prosecuting said charge and who appeared at Plaintiff's trial to testify against Plaintiff whereupon the false charge was dismissed for lack of probable cause.

126. Defendant Hedrick fraudulently concealed from Plaintiff the activities in the parking lot subsequent to her arrest that produced the fabricated tire marks which were used by Rodney Hedrick and the other defendants to charge, prosecute and try her on said false charge of destruction of property.

127. Defendant Kyle Koppenhaver maliciously participated with Defendant Morris and with the other defendants in the instigation of the charge of destruction of property and Plaintiff's arrest upon said charge by ratifying and supporting Morris's aforesaid false statement to the police that Plaintiff had caused the accident, maliciously concealing the facts known to him when Plaintiff begged him to tell Trooper Walker the truth about what had occurred as is set forth in ¶¶ 41, 42, *supra*.

128. Defendant Koppenhaver thereafter consulted with the other defendants and advised together with them in the APU parking lot and thereafter to have Plaintiff prosecuted for said false charge maliciously and with malice aforethought knowing that she had not committed destruction of property nor had she even caused the accident that occurred when Dale DeGrave negligently drove the right tire of his pick-up truck into the passenger door of her Honda Pilot as set forth in the above including ¶¶ 44, 50-56, *supra*.

129. Defendant Koppenhaver fraudulently participated in the mock accident subsequent to the arrest of Plaintiff for the purpose of enabling and conducting the false charge of destruction of property against Plaintiff.

130. Plaintiff's prosecution on the false charge of destruction of property was carried out under the countenance and approval of Defendant Koppenhaver who assisted the Office of Prosecuting Attorney of Jefferson County in prosecuting said charge and who appeared at

Plaintiff's trial to testify against Plaintiff whereupon the false charge was dismissed for lack of probable cause.

131. Defendant Koppenhaver fraudulently concealed from Plaintiff the fraudulent activities in the parking lot subsequent to her arrest that produced the fabricated tire marks which were used by Rodney Hedrick and the other defendants to charge, prosecute and try her on said false charge of destruction of property.

132. Trooper Walker acted with malice outside the scope of his official authority in maliciously charging Plaintiff with the offense of destruction of property without reasonable or probable cause, which charge was favorably dismissed by the Magistrate Court of Jefferson County, WV, on November 14, 2016.

133. Trooper Walker knew that to constitute the offense of destruction of property pursuant to West Virginia Code §61-3-30 under which he made the charge, the extent of the injury to DeGrave's truck must have been such as to impair the utility or diminish the value of such property.

134. Trooper Walker knew, regarding said destruction of property charge, that the element of damages was absent because Dale DeGrave expressly and specifically told Trooper Walker that there was no damage to his vehicle during Walker's investigation.

135. Trooper Walker's action in charging Plaintiff with destruction of property, knowing that there was "no destruction," was malicious and was done for personal reasons and is a constituent of Walker's pattern behavior to bully citizens, particularly women, emotionally and physically for his personal gratification.

136. Trooper Walker's further purpose in maliciously charging Plaintiff with destruction of property was done to justify his unlawful use excessive use of force in arresting Plaintiff for said

crime of destruction of property and his unlawful arrest of her for disorderly conduct in a place that is outside the reach of the statute for said offense was charged by him as is set forth herein, including ¶¶ 39-47.

137. Following Plaintiff's unlawful arrest, Defendant Walker fraudulently participated in the aforementioned mock accident for the purpose of creating false evidence in the form of tire tracks leading to Plaintiff's vehicle which was moved subsequent to the accident but which Trooper Walker used in charging and prosecuting Plaintiff up and through the trial at which he testified and at which said destruction of property charge was dismissed all as set forth above, including at ¶¶ 47-57.

138. Trooper Walker participated in the aforesaid fabrication of evidence knowing that his activities in so doing constitute an unlawful obstruction of justice.

139. Defendant Walker's further purpose in participating in the post arrest mock accident was to fraudulently justify and conceal the fact that he used excessive use of force in arresting Plaintiff where no force was necessary.

140. Trooper Walker failed in his affirmative duty to investigate the aforesaid APU video and to reveal the exculpatory information therein conclusively proving that Plaintiff did not produce the tire tracks which Trooper used as evidence in maliciously charging and prosecuting Plaintiff for destruction of property.

141. Defendant Jason Newlin maliciously participated with Defendant Morris and with the other defendants in the instigation of the charge of destruction of property and Plaintiff's arrest upon said charge by ratifying and supporting Morris's aforesaid false statement to the police that Plaintiff had caused the accident, and by conducting Plaintiff's prosecution through the use of



false statements including false hearsay statements from individuals whose identity he did not obtain.

142. Defendant Newlin knew that Plaintiff had not committed the offense of destruction of property because Dale DeGrave informed him that his vehicle was not damaged and Defendant Newlin knew that damage was an element of the offense under West Virginia Code §61-3-30 and knew, the charge was false from the physical evidence as alleged above, including in ¶ 58.

143. Following Plaintiff's unlawful arrest, Defendant Newlin fraudulently participated in the aforementioned mock accident for the purpose of creating false evidence in the form of tire tracks leading to Plaintiff's vehicle which was moved subsequent to the accident but which Trooper Walker used in charging and prosecuting Plaintiff up and through the conclusion of the dismissal of said destruction of property charge as set forth above.

144. Defendant Newlin participated in the aforesaid fabrication of evidence knowing that his activities in so doing constitute an unlawful obstruction of justice.

145. Defendant Newlin's further purpose in participating in the post arrest mock accident was to fraudulently justify and conceal the fact Walker used excessive use of force in arresting Plaintiff where no force was necessary.

146. In furtherance of Plaintiff's malicious prosecution for the offense of destruction of property Defendant Newlin failed in his affirmative duty to reveal to Plaintiff the exculpatory information and failed to disclose it to the Office of Prosecuting Attorney which evidence conclusively proves that Plaintiff did not produce the tire tracks which Trooper used as evidence in maliciously charging and prosecuting Plaintiff for destruction of property.

147. Defendant Newlin participated in the initiation, conduct and prosecution of Plaintiff to the conclusion of the dismissed charge of destruction of property meeting with the Office of the

Prosecuting Attorney of Jefferson County prior to trial and appearing at trial and testifying for said purpose.

148. Defendant Sigulinsky maliciously participated with Defendant Morris and with the other defendants in the instigation of the charge of destruction of property and Plaintiff's arrest upon said charge by ratifying and supporting Morris's aforesaid false statement that Plaintiff had caused the accident, knowing from the physical evidence that Plaintiff had not caused the accident (see e. g. ¶ 58) and knowing that Dale DeGrave had informed that his truck had suffered no damage.

149. Following Plaintiff's unlawful arrest, Defendant Sigulinsky fraudulently participated in the aforementioned mock accident for the purpose of creating false evidence in the form of tire tracks leading to Plaintiff's vehicle which was moved subsequent to the accident but which Trooper Walker used in charging and prosecuting Plaintiff up and through the conclusion of the dismissal of said destruction of property charge as set forth above, including ¶ 49.

150. Defendant Sigulinsky participated in the aforesaid fabrication of evidence knowing that his activities in so doing constitute an unlawful obstruction of justice.

151. Defendant Sigulinsky's further purpose in participating in the post arrest mock accident was to fraudulently justify and conceal the fact Walker used excessive use of force in arresting Plaintiff where no force was necessary.

152. In furtherance of Plaintiff's malicious prosecution for the offense of destruction of property Defendant Sigulinsky failed in his affirmative duty to reveal to Plaintiff the exculpatory information and failed to disclose it to the Office of Prosecuting Attorney but therein conclusively proving that Plaintiff did not produce the tire tracks which Trooper used as evidence in maliciously charging and prosecuting Plaintiff for destruction of property.

153. Defendant Newlin participated in the initiation, conduct and prosecution of Plaintiff to the conclusion of the dismissed charge of destruction of property and met with the Office of Prosecuting Attorney and appeared at the magistrate court trial and testified against Plaintiff.

#### **COUNT VI – ABUSE OF PROCESS**

154. Plaintiff incorporates the foregoing paragraphs in this Second Amended Complaint the same as if fully set forth herein.

155. The allegations in the foregoing paragraphs constitute a claim for abuse of process regarding the charge of destruction of property.

156. Further, the said defendants, and each of them, played a critical role in the charge against Plaintiff's for disorderly conduct and obstructing an officer as aforesaid including the allegations contained in ¶¶ 96-102, *supra*.

157. The Defendants committed said acts willfully, knowing that their participation in the procurement of the false charges and their participation in the prosecution of said charges would cause Plaintiff injury to her reputation, good name, and subject her to the violation of her rights to due process and her liberty interests.

158. John Timothy Morris, Allen Shutts, Dale DeGrave, Kyle Koppenhaver, Rodney Hedrick did so in retaliation for Plaintiff's expressed opposition to the Green Corridor Project and to intimidate and shut her down so that she would not further protest said project or take legal action to prevent the closure of the alley accessing her two real estate properties.

159. Defendant Kelly Halbert conspired with Trooper Walker to fabricate evidence of a disturbance prior to Plaintiff's arrival at the Hospital in violation of Plaintiff's right to due process as set forth above, including ¶¶ 66-74.

160. Defendant Halbert willfully and intentionally participated in Walker's ploy to have Plaintiff cry out in pain at the Hospital when he pushed her injured arm.

161. Defendant Halbert knew that by providing Trooper with a false statement pertaining to her injured condition at the Hospital she not only violated Plaintiff's right to due process but also violated her federal and state rights to privacy.

162. Trooper Walker conspired with Sergeant Sigulinsky and Officer Newlin and the other defendants in an attempt to coordinate statements and testimony to secure a conviction against Plaintiff.

163. Trooper Walker's primary motive in conspiring to fabricate physical evidence and testimony was to improperly charge Plaintiff with disorderly conduct and obstructing an officer to justify Trooper Walker's excessive use of force in the arrest of Plaintiff where no force was necessary and prevent Plaintiff from a successful suit against him for excessive use of force arising out of his illegal arrest.

164. In furtherance of their plan and scheme to have Plaintiff falsely charged, all three officers failed to preserve any video or audio footage of Plaintiff's arrest in violation of their respective police department policies although all three were equipped with such devices.

165. Trooper Walker, acting individually and outside the scope of his authority as a police officer, misused lawful process in the issuance of a criminal complaint against Plaintiff for disorderly conduct and obstruction to carry out his personal objectives that were not warranted by that process.

166. While knowing that Plaintiff could not properly be charged with disorderly conduct in the parking lot and knowing that Plaintiff was merely exercising her right to tell the officer the truth about what had occurred in the accident, Trooper Walker used the opportunity to bully and

harass Plaintiff. Instead of permitting her the lawful right to protest the false charges and provide him with the truth, Walker told Plaintiff that he did not care and to shut up and then intentionally and willfully improperly used the charges of disorderly conduct and obstruction as a ruse to arrest her in retaliation for her attempts to exercise her first amendment rights and to harass her and abuse her as aforesaid including at ¶¶ 39-43.

167. Trooper Walker's sexual harassment of Plaintiff following her arrest is well known prohibited conduct particularly when committed by one acting under color of law.

#### **COUNTY VII - BATTERY**

168. Plaintiff incorporates the foregoing paragraphs in this Second Amended Complaint the same as if fully set forth herein.

169. The allegations set forth in the foregoing, and particularly those set forth in ¶¶ 45-47, 67 constitute unlawful battery in which Trooper Walker used excessive and unlawful force in Plaintiff's arrest where no force was necessary under all the facts and circumstances as set forth herein.

170. That all other Defendants stood by and watched as Plaintiff was physically abused, doing and saying nothing to stop the abuse even though their actions had instigated the abuse and said conduct by the Defendants constitutes battery against the Plaintiff.

171. Plaintiff suffered severe and permanent injuries to her neck, back and left arm as a result of Trooper Walker's excessive use of force incident to her unlawful arrest.

#### **COUNT VIII – AIDING AND ABETTING BATTERY**

172. Plaintiff incorporates by reference all the allegations contained in the previous paragraphs the same as if fully set forth herein.

173. That Defendants assisted, encouraged, aided and abetted the WVSP and Trooper Walker in the battery of Plaintiff as is set forth in the above paragraphs.

**COUNT IX - 42 U.S.C §1983 VIOLATION, VIOLATION OF FIRST, FOURTH AND  
FOURTEENTH AMENDMENT RIGHTS**

174. Plaintiff incorporates the foregoing paragraphs in this Second Amended Complaint the same as if fully set forth herein.

175. Trooper Walker acted under color of law but outside his official capacity in regard to the acts set forth in the above including ¶¶ 41-43, 45-53, 57, 59-71, 74-83, which acts constitute a violation and abridgement of Plaintiff's protected rights under the First, Fourth and Fourteenth Amendment of the United States Constitution in violation of 42 U.S.C. §1983.

**COUNT X – SPOILIATION OF EVIDENCE**

176. Plaintiff incorporates the foregoing paragraphs in this Second Amended Complaint the same as if fully set forth herein including ¶¶ 50-56, 68.

177. Said actions by the Defendants constitute the spoliation of evidence by breaching Defendants' duty to preserve material evidence during the period before this litigation commenced and where the Defendants reasonably should have known that moving Plaintiff's vehicle subsequent to the accident may be relevant to anticipated litigation.

**COUNT XI - FRAUD AND CONSPIRACY TO COMMIT FRAUD**

178. Plaintiff incorporates the foregoing paragraphs in this Second Amended Complaint the same as if fully set forth herein including §§ 47-63.

179. The Defendants acted in combination with each other to commit the tort of fraud by unlawfully misrepresenting that, among other things hereinabove alleged, the tire tracks which Trooper Walker photographed at the rear of Plaintiff vehicle after it was moved following her arrest were caused by Plaintiff.

180. The Defendants acted as aforesaid in concert to accomplish the unlawful purpose of having Plaintiff prosecuted for offenses that she did not commit including that of destruction of property.

181. The Defendants further acted as aforesaid by the unlawful means of participating in the fabrication of evidence against Plaintiff as aforesaid.

182. The actions of the Defendants caused Plaintiff great injury as set forth in this Second Amended Complaint.

### **COUNT XII - NEGLIGENCE**

183. Plaintiff pleads in the alternative that actions taken by Officer Newlin, Officer Sigulinsky, Rodney Hedrick and Kyle Koppenhaver were negligently committed in the following particulars.

184. Officer Newlin and Sergeant Sigulinsky owed a duty to Plaintiff to afford her due process in their investigation of the events described in the Second Amended Complaint.

185. Officer Newlin negligently breached his duty by obtaining witness statements without identifying the individuals from whom the statements were taken and then providing said hearsay information to Trooper Walker and the Office of the Prosecuting Attorney.

186. Officer Newlin held specific knowledge that the APU parking lot was not open for use by the public for parking but negligently failed in his duty to ensure that Trooper Walker did not charge her for disorderly conduct at that location.

187. Officer Newlin had the duty to follow his department policy in regard to use of his audio/video equipment and reporting the use of force which policies are designed, in part, to memorialize events for the benefit of the justice system and citizens such as Plaintiff who become subject to the justice system.



188. Officer Newlin failed in his duty to follow department policy in regard to use of his audio/video equipment and reporting the use of force by failing to properly position his vehicle to record the events in the APU parking lot, by failing to preserve all audio and video footage from the event, and by failing to document use of force as is required by said policy.

189. Sergeant Sigulinsky held specific knowledge that the APU parking lot was not open for use by the public for parking but negligently failed in his duty to ensure that Trooper Walker did not charge her for disturbing the peace at that location.

190. Sergeant Sigulinsky had the duty to follow his department policy in regard to use of his audio/video equipment and reporting the use of force which policies are designed, in part, to memorialize events for the benefit of the justice system and citizens such as Plaintiff who become subject to the justice system.

191. Sergeant Sigulinsky failed in his duty to follow department policy in regard to use of his audio/video equipment and reporting the use of force event though his vehicle was admittedly positioned such that the events in the APU herein described were recorded, by failing to preserve all audio and video footage from the event, and by failing to document use of force as is required by said department policy.

192. Rodney Hedrick owed Plaintiff the duty of due care to truthfully report the events which he described in his statement to the police.

193. Rodney Hedrick acted negligently in providing a statement for use to prosecute Plaintiff in which he embellished a civil discussion had between Plaintiff and DOH employees at the Ranson WVDOH field office prior to Plaintiff's arrest therein stating words to the effect that Plaintiff was causing a disturbance therein, when, in fact she caused no disturbance whatsoever.

194. Kyle Koppenhaver owed Plaintiff the duty to correct mistruths when physically in the presence of Trooper Walker and Plaintiff who was begging him to disclose the truth about the accident which Kyle Koppenhaver had witnessed.

195. Kyle Koppenhaver breached his said duty owed Plaintiff by negligently remaining silent, which had the effect of ratifying and confirming the false statements of Defendant Morris as aforesaid in this Second Amended Complaint.

196. Dale DeGrave owed Plaintiff the duty of due care when operating his motor vehicle in the APU parking lot on April 25, 2016.

197. Dale DeGrave negligently breached said duty by driving to the right without first looking and running into and damaging Plaintiff's vehicle in the amount of \$3,500.

### **COUNT XIII – RESPONDEAT SUPERIOR**

198. Plaintiff incorporates by reference all the allegations contained in the previous paragraphs the same as if fully set forth herein.

199. The Defendant West Virginia Division of Highways is vicariously liable for the negligent acts of Kyle Koppenhaver and Rodney Hedrick as set forth in ¶¶ 192-195, *supra*, which said acts were all committed within the scope of its said employees employment.

200. The Defendant West Virginia Division of Highways is also vicariously liable for such negligent acts of Allen Shutts as, upon discovery in this proceeding may be discovered and is also liable for the intentional acts of Allen Shutts who it vested with agent authority as a project supervisor but who was not its employee.

201. The Defendant City of Charles Town and the City of Ranson are vicariously liable for the negligent acts of their employees Officer Newlin and Sergeant Sigulisky committed within the scope of their respective authority as aforesaid.

202. The Defendant Charles Town General Hospital is vicariously liable for the acts of Nurse Kelly Halbert and the acts of its staff as alleged herein, including ¶¶ 72-74.

#### **COUNT XIV – NEGLIGENT HIRING, TRAINING, AND SUPERVISION**

203. Plaintiff incorporates by reference all allegations contained in the previous paragraphs the same as if fully set forth herein.

204. The Defendant Trooper Walker had a known history of uncontrolled, bullish and abusive behavior, particular toward females and those he perceived to be vulnerable.

205. By way of example, The Defendant Walker had, prior to the arrest of Plaintiff, broken and entered into a Charles Town residence without probable cause, immediately attacked a young female resident and arrested and physically and mentally injuring her, in his words, for “being retarded.” When she repeatedly asked him why he had thrown her to the floor of her house following his unlawful breaking and entering he repeatedly ordered her to Shut Up. Following her arrest and incarceration, the charges were dropped, and she left the State of West Virginia with the intent never to return.

206. The WVSP had reason to know that Trooper Walker drank alcoholic beverages while on duty and engaged in rogue behavior.

207. The WVSP has reason to know of said acts and those pertaining to the allegations contained in this Complaint of fraudulent conduct but, instead of disciplining Trooper Walker has followed its custom of simply transferring him to another detachment.

208. The police practice known as “code of silence” is so prevalent throughout the United States that failure to train officers that they must not, under any circumstances participate in it and must report all misconduct and insure protection against it constitutes a deliberate failure on the part of the Defendant West Virginia State Police, City of Charles Town and City of Ranson.

209. Trooper Walker's customary conduct of driving on the highway at speeds in excess of 20 MPH over the speed limit when no emergency exists and the like behavior of other troopers was commonly known to the WVSP and to Walker's supervisors and the failure to supervise, discipline, and train officers not to do so constitutes deliberate and intentional failure.

210. The Defendants West Virginia State Police, City of Charles Town and City of Ranson further failed in their duty to train the defendant officers in this case in regard to:

- a. Failing to properly train and supervise their officers not to use their power and authority as officers of the law to harass, physically and sexually intimidate and abuse citizens for personal gratification or otherwise;
- b. Failing to properly train their officers that they must not, under any circumstances, participate in "code of silence" when observing a violation of a citizen's civil rights or when observing the fabrication of evidence to justify the deprivation of a citizen's liberty, but that they must report such violations to the proper authorities;
- c. Failing to properly train their officers that they must not charge a citizen with destruction of the property of another where no property of another was damaged, injured or destroyed within the meaning of the West Virginia Code;
- d. Failing of WVSP to properly train and properly supervise Trooper Walker that he must not use the power of his office as a State Trooper to pursue personal vendettas, revenge, sexual gratification or other personal agendas when it had reason to know that Trooper Walker engages in such practices;

- e. Failing to properly train their troopers and officers to comply with proper use of audio and video equipment policies and procedures, the violation of which is condoned and supported by their supervisors;
- f. Failing to properly train their officers in using physical force and excessive physical force on unarmed citizens who pose no physical threat to them or to anyone else; and,
- g. Failing to train their officers on the necessity for documenting the use of force.

211. The City of Ranson either failed to properly vet Sergeant Sigulinsky based on his prior conduct or it employed him knowing of his unfitness to serve as an officer.

212. The negligence of the WVSP, the City of Charles Town and the City of Ranson in inadequately hiring, training and supervising the above-named Defendants directly and proximately caused Plaintiff to suffer harm, including personal injuries, extreme emotional distress, loss of enjoyment of life, damage to reputation, loss of earnings and economic damages, for which she is entitled to recover.

213. The Defendant Charles Town Hospital is liable for the negligent acts of its employees as set forth in ¶¶ 69-73.

214. The Defendant Charles Town Hospital is liable for failing to adequately train and supervise its staff, including Defendant Kelly Halbert, which failure resulted in the violations of Plaintiff's rights as aforesaid.

#### **COUNT XV – VIOLATION OF EQUAL PROTECTION**

215. Plaintiff incorporates by reference all the allegations contained in the previous paragraphs the same as if fully set forth herein.

216. In express retaliation for the fact that Plaintiff was lawfully arraigned and not placed in jail on the night of her arrest, the Defendant police officers maliciously caused Plaintiff to be subjected to discriminatory and disparate treatment in violation of her rights to equal protection with no offer of a pre-trial diversion agreement and the conditional dismissal of the charges as is routinely offered in a case such as Mrs. Hamstead's where the Plaintiff has absolutely no prior record and especially where there exists no victim.

**COUNT XVI - NEGLIGENT OR INTENTIONAL INFLICTION OF EMOTIONAL  
DISTRESS/TORT OF OUTRAGE**

217. Plaintiff incorporates by reference all the allegations contained in the previous paragraphs the same as if fully set forth herein.

218. The conduct by all Defendants herein, as set forth above in detail including the arrest and beating of Plaintiff for crimes she did not commit, the fabrication of evidence against Plaintiff and the participation in code of silence was so outrageous in character and so extreme in degree, that this conduct exceeded all bounds of decency, and should be regarded as atrocious and utterly intolerable in a civilized community.

219. Defendants' conduct has driven Plaintiff, who had no prior criminal record of any kind, out of the State of West Virginia, caused her to suffer great embarrassment and damage to her good name and reputation, rendered it impossible for her to obtain suitable employment leading to insolvency, and caused her severe and permanent injury to her neck, back, and left shoulder for which she has received treatment and continues to receive treatment.

220. As a result of said conduct, Plaintiff, who is a highly skilled violinist and fiddler, has been unable to play violin for more than short periods of time and suffers significant pain when so doing. Thus, Plaintiff has lost the pleasure and enjoyment of anticipated professional performances at clubs and weddings.

218. Defendants knew, or should know, that Plaintiff would suffer extreme emotional distress as a direct and proximate result of their actions and have been informed and know that she continues to suffer great injury from the continued abuse of process on the false charges of disorderly conduct and obstructing an officer.

#### **COUNT XVII – DAMAGES**

219. Plaintiff incorporates by reference all allegations contained in the previous paragraphs the same as if fully set forth herein.

220. As a direct and proximate result of the actions of the defendants as aforesaid Plaintiff has suffered great harm, including permanent physical injuries, extreme emotional distress, loss of enjoyment of life, damage to her reputation, loss of earnings and economic damages, for all of which she is entitled to recover.

#### **COUNT XVIII – PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays for the following relief against the Defendants, jointly and severally:

- a. An award of damages for past and future medical expenses, personal injuries, pain and suffering, mental anguish, permanent injury, loss of enjoyment of life, economic damages, lost wages, and loss of earning capacity in such amounts as are meet and just;
- b. Punitive damages, as may be permitted by law against such Defendants as were grossly negligent, reckless, and/or engaged in intentional misconduct;
- c. Pre-judgment and post-judgment interest;
- d. Costs and attorney fees expended in this civil action and the pending criminal actions;

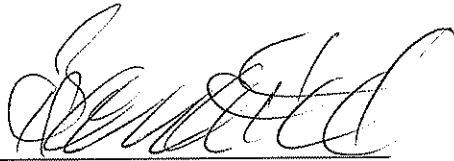


e. Any other further general or specific relief that this Court deems just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES.**

Respectfully submitted,

Julie Ann Hamstead,  
Plaintiff, by Counsel.



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